PRACTICE.

Boyd, C.] [February 14.

COMSTOCK v. HARRIS.

Discovery—Examination of party resident out of jurisdiction—Appointment and subpœna—Conduct money—Convenience—Production of books—Staying action.

When a party to an action who lives in a foreign country comes within the jurisdiction, service upon him of an appointment and subpœna, as in the case of resident litigants, is sufficient to compel his attendance; and it lies upon the party so served to object at the time to the payment made for conduct money.

It is not reasonable that books in constant use in business should be brought into the jurisdiction from a foreign country for the purposes of an examination, unless the examiner in the course of the examination rules that they are necessary.

Upon failure of the plaintiff to attend for examination, pursuant to the subpœna and appointment served upon him, the action should not be stayed till he does attend; it is sufficient to impose a stay for a definite time.

Langton, for the plaintiff.

Holman, for the defendant.

Rose, J.] [March 1.

WRIGHT v. WRIGHT.

Interlocutory costs—Staying proceedings—Trespass.

Where the plaintiff is acting in good faith his action should not be stayed for non-payment of interlocutory costs; and an action of trespass is in that respect in no way different from any other.

Stewart v. *Sullivan*, 11 P. R. 529, followed.

Beck, for the plaintiff.

W. H. P. Clement, for the defendant.

Chancery Divisional Court.] [March 5.

TEMPERANCE COLONIZATION SOCIETY v. EVANS.

Jury notice—Money demand—Preliminary question—Severing issues—Rule 256, O. J. A.—Trial judge—C. L. P. Act, sec. 255.

The order of PROUDFOOT, J., *ante* p. 37, striking out the jury notice was reversed, and the jury notice restored.

Held, a proper case in which to exercise the power under Rule 256, O. J. A., of severing the action so as to have that part of it which is preliminary tried first, the defendants having a *prima facie* right to a jury (unless the judge at the trial dispenses with one), as to the main matter in controversy, viz., the plaintiffs' demand for payment of instalments due under the scrip contract; while the other claim of the plaintiffs, viz., for a declaration of their right to specific performance of settlement duties, could be better tried without the intervention of a jury.

Per PROUDFOOT, J., who retained his former opinion. The court or a judge has power by the C. L. P. Act, s. 255, to act before the trial by striking out the jury notice, and the power should be exercised when it is perfectly clear that the issues are such that they cannot be properly tried by a jury; the question should not in every case be left to the trial judge to determine.

Hoyles, and *A. D. Cameron*, for the defendants.

Lount, Q.C., and *A. H. Marsh*, for the plaintiffs.

Chancery Divisional Court.] [March 5.

ANDREWS v. CITY OF LONDON.

Costs, scale of—"Event"—Trial—Rule 511—Set-off.

The parties by consent allowed a verdict for the plaintiff for $1, to be taken before the judge at the assizes, to be altered according to the result of a reference agreed upon, and also agreed that the costs should abide the event. The action was for damages for negligence, and the award was in favour of the plaintiff for